

Issues raised in environmental justice comments on the Notice of Preparation for the Delta Plan Amendments Program Environmental Impact Report

On April 17, 2017, Restore the Delta and the Environmental Justice Coalition for Water (“Restore the Delta”) submitted scoping comments in response to the Notice of Preparation for the Delta Plan Amendments PEIR. In addition, at the April 28, 2017 Council meeting, a representative of the City of Stockton testified briefly about these same issues. These comments cited several provisions of State and federal law, which are discussed below. Restore the Delta submitted additional comments on June 7, 2017 referring to their prior comments.

Because the Council is a State agency, it is required to consider the State’s policy regarding the human right to water when it revises, adopts, or establishes policies, regulations, and grant criteria that are pertinent to the use of water, which may include amendments to the Delta Plan. Accordingly, the information below concerning the human right to water has been prepared for consideration by the Council. The other statutory sections and Executive Order (EO) 12898, cited by Restore the Delta, are not applicable to the Council because they apply to agencies other than the Council, they apply in limited circumstances, or they apply only to federal agencies.

Water Code section 106.3 establishes a state policy that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” State agencies must “consider” this policy when establishing policies, regulations, and grant criteria.

Although no courts have interpreted this provision, it appears that the Council should take into account the human right to water in its decision making process. As a best practice, the Council should also document that it has done so by providing references to the materials that it has considered in the administrative record.

The Delta Plan must promote water conservation, efficiency, and sustainable use of water. It must also include measures to promote a more reliable water supply by meeting water needs, sustaining the economic vitality of the state, and improving water quality to protect human health. The Council must consider incorporating actions in the Delta Plan to implement specific subgoals and strategies, including improving water quality to meet drinking water goals. These requirements relate closely to California’s policy that every human have adequate, safe, affordable water, and the Delta Plan acknowledges that the Council must consider this policy. In addition, the eight inherent objectives for management of the Delta include protecting and enhancing the Delta “as an evolving place.” This goal indicates that the evolving needs of the people who rely on the Delta must be considered.

To comply with these policy mandates, the Council should consider how the CSO amendment will impact access to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. Staff has considered potential impacts of the CSO amendment and concludes that options promoted in the

CSO amendment will have a beneficial impact to environmental justice communities. The CSO amendment promotes the development of and access to more reliable surface water and groundwater supplies, including the sustainable management of groundwater. Implementation of these recommendations would benefit many individuals and communities in the State affected by declining groundwater levels, insufficient surface water supplies to recharge of aquifers and/or support human and domestic use, impaired surface and/or groundwater supplies, a limited portfolio of water supply options, water supplies vulnerable to climate change, and other challenges that directly relate to the safety, accessibility, and affordability of water.

Disadvantaged communities are disproportionately affected by water resource challenges related to groundwater, as many small and rural communities rely on groundwater for all or a large portion of their supplies.¹ Conjunctive management of surface and groundwater supplies, including passive and active groundwater recharge and in-lieu recharge², is an important tool for sustainable groundwater management.³ Improvements to conveyance, storage systems, and the operation of both promoted in the CSO amendment supports conjunctive management, which will contribute to sustainable groundwater management in many areas of the state, including disadvantaged communities, and help assure the right to safe, clean, affordable, and accessible water for human consumption and domestic use. Further, the CSO amendment promotes integrated, regional and statewide water storage and conveyance improvements that disadvantaged individuals, groups, or communities may not be able to implement, fund, operate, and maintain on their own. The CSO amendment also makes recommendations for criteria that should be considered in issuing state funds for storage and conveyance projects that could contribute to the coequal goals.

Many of the issues raised in the June 7, 2017 comments are outside the scope of the State's human right to water policy, but several warrant consideration by the Council. Potential effects on drinking water quality, groundwater quality, and groundwater accessibility (groundwater levels) will be addressed in the California Environmental Quality Act Environmental Impact Report that will be prepared for the CSO amendment. In addition, changes in water supply or quality could have financial impacts. However, the Council cannot predict how such impacts might be addressed by water suppliers or impact individual water users. Specific impacts of conveyance and storage projects should be addressed in review and permitting for individual projects.

¹ SWRCB 2013

² In-lieu recharge is the process of temporarily decreasing the amount of groundwater pumped from an aquifer in combination with a proportional increase in surface water deliveries. Decreased groundwater pumping typically occurs in wet years, allowing the aquifer to naturally recharge and be available for use during dry years.

³ Fournier et al. 2016

It is not believed that the other codes referenced in the Restore the Delta comments apply to the Council, either because they only apply to other agencies or to agencies performing different functions:

- Water Code sections 104 through 106 establish State priorities for use of water, and do not impose any specific obligations on the Council.
- Government Code section 65040.12(e) (state environmental justice programs) is a provision of the State Planning and Zoning Law establishing the powers and duties of the Office of Planning and Research (OPR) and applies only to the role of OPR in coordinating state environmental justice programs. It does not impose obligations on the Council.
- Government Code section 11135(a) (state anti-discrimination statute) applies to state agencies in their distribution of direct benefits, such as employment, contracts, funding, financial assistance, licensing, project approvals, and services. As a comprehensive long-term management plan for furthering the coequal goals in the Delta that guides the activities of other agencies, the Delta Plan does not fall within this provision.
- Federal EO No. 12898 (federal actions with environmental justice implications) applies to federal agencies only.
- Commenters did not cite, and staff has not identified, any state laws or regulations requiring translation of Delta Plan documents.